

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 9
of the Communications Act

Assessment and Collection of
Regulatory Fees for the 1994
Fiscal Year

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)
) MD Docket No. 94-19
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)
)

COMMENTS OF
GE AMERICAN COMMUNICATIONS, INC.

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Summary

In these comments on the Commission's proposals to implement user fees, GE American Communications, Inc. ("GE Americom"), reserves comment, until the separate proceeding planned by the Commission for determining FY 1995 fees, on whether the fees applicable to space stations are more than are necessary to recoup the costs of the activities they are intended to cover. However, GE Americom here requests two modifications to the proposed fee structure: (1) the Commission should establish pro rata fees for a space station in the year that it is launched and the year when it is decommissioned; and (2) the Commission should categorize the fees applicable to space stations as "large" and allow them to be paid in installments.

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COMMENTS OF
GE AMERICAN COMMUNICATIONS, INC.

GE American Communications, Inc. ("GE Americom") hereby comments on the Notice of Proposed Rulemaking in the above-referenced proceeding ("NPRM"),¹ which proposes to implement new section 9 of the Communications Act of 1934, as amended, to assess and collect annual "regulatory fees" to recover costs incurred by the Commission in carrying out its enforcement activities, policy and rulemaking activities, user information services, and international activities.

Introduction

GE Americom is a domestic communications satellite company, with a fleet of eight in-orbit satellites and a network of hundreds of earth station antennas.² As such, it will be

¹ ____ FCC 2d ____ (Order FCC 94-46, released Mar. 11, 1994).

² GE Americom is also the joint licensee, with GTE Spacenet of GSTAR I. In addition, GE Americom is in the process of constructing a hybrid satellite and has recently applied, in File Nos. 18-DSS-P/LA-94 et al., to construct two Ku-band replacement satellites. GE Americom is also the licensee of microwave facilities.

significantly affected by the regulatory fee program.

As a preliminary matter, GE Americom disagrees with the level of fees on space stations, in that they appear to exceed substantially the costs which Congress established as the basis for the fees, namely the costs involved in enforcement activities, policy and rulemaking activities, user information services, and international activities. The domestic satellite industry does not require extensive regulation when compared to other communications regulatees and is administered by a relatively small office within the Common Carrier Bureau. In dealing with space stations, much of the Bureau's attention is devoted to establishing assignments within the orbital arc, and applicants for such authority already pay \$70,000 for each orbital location.

GE Americom understands, however, that the Commission believes it lacks authority to alter the fee schedule for fiscal year 1994.³ In light of the Commission's plans to initiate a separate proceeding to determine fees for the 1995 fiscal year based on the actual costs of performing the activities for which a fee may be charged,⁴ GE Americom will reserve further comment regarding the amount of fees assessed for space stations until that time.

³ NPRM at ¶¶ 7-9.

⁴ Ibid. at n.13.

Instead, GE Americom will restrict its comments here to two limited matters: (1) the need for the Commission to establish pro rata fees for space stations that are brought on line or taken out of service during the year; and (2) the need for the Commission to include space station fees within the category of "large" fees eligible under the statute for payment by installments.

I.

THE COMMISSION SHOULD AUTHORIZE PAYMENT
OF PRO RATA FEES FOR THE INITIAL AND FINAL YEARS
OF A SPACE STATION FACILITY'S OPERATION

The Commission should authorize fees to be paid on a pro rata basis for the first and final years of space station operation, unless, during either of these periods, the facility is in operation for the full year. For example, a space station that begins service halfway through the fiscal year should be assessed at the amount of \$32,500, or half the annual \$65,000 fee due for space stations. By the same token, the Commission should authorize credits or refunds on fees paid by space stations as of the date they are taken out of service.⁵

⁵

Although the statute is silent on the subject of refunds, the Commission has said, in a similar context involving licensing fees: "Our general statutory authority is broad enough to permit us to act in instances where a return of, or a credit for, a fee would be warranted." Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Reconciliation Act of 1985, 2 FCC Rcd 947, 950 (1987). The same general statutory authority should be broad enough here to permit the Commission to return or credit fees.

The basis for pro rata fees for space stations is that, prior to operation, the licensee will have expended considerable funds and effort in construction and launch, without the benefit of user revenues out of which to pay fees and begin to recoup its investment.

It is important to note here that GE Americom's request for pro rata assessment is limited to space station fees, and then to two instances only: when a space station is commissioned and when it is decommissioned.⁶ Under GE Americom's proposal, there will be no pro rata assessments during intervening years (which are often ten or more) based on the portion of the year that the space station may be in operation. Because pro rata assessments would occur only in two separate years at most, GE Americom's proposal would not entail an increase in the Commission's regulatory burdens in establishing and collecting space station fees.

⁶ GE Americom also believes that the Commission should clarify how the fees apply when space stations are sold. While in such instances the full amount of the fee would be payable, it seems appropriate that the seller and buyer defray the fee proportionally. GE Americom suggests that the Commission require the transferor to pay a pro-rated fee for all months prior to the license transfer and for the transferee to pay a pro-rated fee based on the remainder of the year. In each such instance, the Commission would receive the full amount of fees due for that space station, albeit from two different payors.

The Commission should further deal with the related issue of jointly-licensed satellites by leaving responsibility for payment up to arrangements between the joint licensees. Here, as elsewhere, the Commission's concern should be limited to receipt of full payment of a fee, regardless of the identity of the payee.

Likewise, adoption of partial-year fees, coupled with credits and refunds, as proposed by GE Americom, would not interfere with the overall intention of the Omnibus Budget Reconciliation Act of 1993, which is that the Commission look, in part, to regulatory fees to support certain designated activities. It is unlikely that the Commission will suffer any adverse financial consequences by granting this request. This request covers only the year of commissioning and the year of decommissioning of a space station facility. Communications satellites are licensed for a ten-year period⁷ and often have an operational lifetime in excess of this period. Because the number of satellites launched or taken out of service is annually very small, adoption of GE Americom's proposals should not materially alter the Commission's plans for relying in part on fees, in accordance with Congressional authority, to recoup certain regulatory costs, which in the case of satellites are relatively small.⁸

The Commission has plenary authority under the statute to add this element of flexibility to its fee assessment and collection program. Section 9(d) provides:

The Commission may waive, reduce or defer a fee for good cause shown, where such action would promote the public interest.

⁷ 47 C.F.R. § 25.120(a).

⁸ At present, there are more than 35 domestic and separate system space stations in orbit, which would produce annual fees of more than \$2 million.

Section 9(d) explicitly permits the Commission to adopt GE Americom's proposal for partial year fees for satellites during their first and last years of operation. While GE Americom is aware of the Commission's proposal to subject ad hoc applications for a waiver or deferral of fees under section 9(d) to stringent conditions,⁹ GE Americom's proposal is not an ad hoc application, and the NPRM did not propose that these conditions would come into play for petitions for the limited reductions and refund/credit program sought by GE Americom. GE Americom is not seeking for fees to be waived but reduced, and then on two occasions only.

In discussing implementation of the fees, the Conference Report required the Commission to "ensure that fees are reasonably related to the benefits provided to the payor of the fee by the Commission's activities."¹⁰ The Commission will meet this requirement if it adopts GE Americom's position. A pro-rated fee in these limited instances would be reasonably related to the benefit involved and thus is in the public interest.

⁹ NPRM at 24.

¹⁰ H. Conf. Rept. No. 103-213, 103rd Cong., 2d Sess., 499 (1993).

II.

THE COMMISSION SHOULD PERMIT INSTALLMENT
PAYMENTS OF SPACE STATION FEES

Permitting space station fees to be paid on an installment basis would comport with the intention of Congress, which directed the Commission to adopt a "fair administration of the user fee proposal."¹¹ In section 9(f) of the statute, the Commission is required to adopt regulations which would "permit payment by installment in the case of fees in large amounts." The Commission has proposed an unreasonably narrow construction of the statutory language by stating that it would classify a fee amount as "large" for this purpose only if it greatly exceeds the average annual fee for regulatees in the same category.¹²

Such a definition is unfair, because it fails to consider the fact that fee payments may be large, even though in relative terms they are not greater than equally large payments made by others in the same category. Conversely, the burden of satellite carriers that pay fees for space stations may be no less than the burden on other regulatees that, because they make larger payments than others in their category, will be permitted to pay equally large, or even smaller, fees in installments.

To rectify this situation, GE Americom proposes that the Commission should classify the fees for space stations as "large" because the fee for space stations greatly exceeds the fees for

¹¹ H.R. Rept. No. 207, 102d Cong., 1st Sess., 11 (1991).

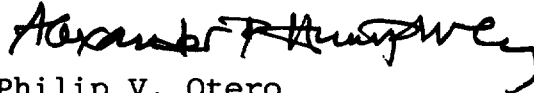
¹² NPRM at ¶ 29.

ground facilities. This would permit the fee for space stations to be paid in installments, while not otherwise affecting the Commission's categorization of fees as "large" in relative terms as proposed in the NPRM.

The Commission should have no problem in defining space station fees as "greatly exceeding" the cost of other licenses that domestic satellite carriers hold. Space station fees for fiscal year 1994 have been established at \$65,000. Measured by any standard, \$65,000 is "large" compared to the average annual fee for other facilities involved in satellite communications. For example, earth station antennas less than nine meters have been assessed an initial fee of \$6 per 100, as have VSATs and equivalent C-band antennas; larger receive-only antennas must pay fees of \$55 per meter; and fees for large transmit/receive antennas are \$85 per meter. In none of these cases are the fees more than a small fraction of the space station fees. Therefore, it would be fully consistent with the "fair administration" of the fee program that Congress required to permit space station fees to be paid in installments by classifying space station fees

as "large" for the purpose of section 9(f) in the manner proposed herein.¹³

Respectfully submitted,



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¹³

As in the case of other regulatees that qualify to pay "large" fees as proposed by the Commission but who hold other licenses, GE Americom would pay fees for its earth station and microwave facilities on the date specified by the Commission. See NPRM at ¶ 30.